Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/05638/2014
IA/08531/2014
IA/06556/2014
IA/05637/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17th April 2015	**On 27th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) MS KAFILAT YETUNDE OSHO
(2) MR SINMILOLUWA SAMUEL OMOTAYO
(3) MASTER JORDAN OLADIPUPO OMOTAYO
(4) MISS WONUOLA ANGEL OMOTAYO
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: No appearance
For the Respondent: Ms L Kenny (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Dineen, promulgated on 18th December 2014, following a hearing at Hatton Cross on 1st May

2014 and 11th September 2014. In the determination, the judge dismissed the appeals of the Appellants, who subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are Nigerian nationals and comprise a mother and her three children. Their respective dates of birth are 4th July 1977, 31st December 2003, 3rd October 2005, and 20th July 2009. The first Appellant, the mother, entered the UK in 2005 on a visitor's visa, and was on that occasion accompanied by her son, the second Appellant. At the time of her entry, the first Appellant was pregnant with her second son, the third Appellant, who was subsequently born in the UK. The fourth Appellant, who is the first Appellant's daughter, was then also born in the UK. The father of all three children is Mr Emmanuel Omotayo. The first Appellant maintains that she last saw him in January 2011 and that he has had no contact with him or the children. The judge did not accept that this was the case.

The Appellants' Claim

3. The first Appellant's claim is that she would like her claim and that of her children to be considered under Article 8 of the European Convention of Human Rights. Two of her dependent children were born in the UK and they have spent their lives continuously in this country. She and her children have no social, cultural, or family ties outside the UK. The claims were considered under Appendix FM and paragraph 276ADE. The Respondent Secretary of State accepted that the Appellants' family met the requirements of "suitability". However, the first Appellant had not shown that she was currently in a subsisting relationship with a British citizen or someone settled in the UK. Nevertheless, with regard to the children, Section EX1 under Appendix FM was applied and the Respondent held that, in the circumstances, it would not be unreasonable to expect the children to leave the United Kingdom because they are Nigerian and citizens of that country and would be able to enjoy full rights there. The Appellants fail to meet the eligibility requirements of paragraph 276ADE(iii) and (vi).

The Judge's Findings

4. The judge heard evidence that the first Appellant was educated in Nigeria, and held a LLB degree from that country, and had qualified at the Nigerian Bar. She had extended family members in that country, including her father's sisters. The judge held that the first Appellant cannot succeed in a claim for indefinite leave to remain as a parent under Appendix FM, because she cannot meet the requirements of E-ILRPT.1.2 as she had not been granted valid leave to remain as a parent, and had not completed the required continuous period of limited leave to remain as a parent (see paragraph 37).

5. The first Appellant's claim under paragraph 276ADE depended on whether she had lost ties with Nigeria and the judge was not satisfied that she was a witness of truth

(paragraph 39). She claimed to have lost contact with her partner Emmanuel Omotayo, but this could not be true because she had access to his bank account (see paragraph 40). There was evidence that the children had established a private life in the UK and were doing very well at school, and the judge accepted that, "the children undoubtedly have established a private life in the UK" (paragraph 53). The judge also applied the established case law that children cannot be penalised for the ill deeds of their parents.

6. Nevertheless, the judge was not satisfied that there were exceptional or compelling circumstances which would make removal of the entire family to Nigeria as a unit disproportionate to the Respondent's lawful aims (paragraph 56).

7. The appeal was dismissed.

Grounds of Application

8. The grounds of application state that the judge failed to give sufficient weight to the fact that he found the two older children would have been able to have established a right to remain in the UK under paragraph 276ADE. He gave insufficient weight to this fact.

9. On 13th February 2015, permission to appeal was granted, including on the ground that the judge had failed to take into account the provisions of Section 117 of the 2014 Act in reaching his decision.

10. On 18th February 2015, a Rule 24 response was entered to the effect that although the eldest children can in principle succeed under paragraph 276ADE, it was open to the Immigration Judge to make the findings that he did, given what he set out at paragraph 43, and his further findings at paragraphs 50 and 55.

Submissions

11. At the hearing before me on 17th April 2015, the Appellants were not in attendance, and nor was there anyone in attendance as their representatives. I put the matter back to the end of the list. The appeal had been set down as an "oral hearing" and it was unclear why there was no one in attendance. During the course of the afternoon, the court clerk made inquiries of those representing the Appellants and spoke on the telephone with one, Mr Ike Okere, of Legal Assistance, and it was then that it became clear that he wanted the appeal to be determined "on the papers". This I accordingly then proceeded to do.

No Error of Law

12. I am satisfied that the making of the decision by the judge does not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. First, whereas it is plainly correct that regard must be had to the "best interests of the child" in any

administrative decision, this was a case where the judge did not accept that the relationship with the children's father, who was in Nigeria, had terminated. He had referred to the fact that the first Appellant, the children's mother, had since January 2011, access to the bank account of Mr Emmanuel Omotayo (see paragraph 40). The judge did give specific consideration to the children's best interests and stated that,

> "I find that their best interests, with regard in particular to their ages, are to continue living in their existing family unit. This means that they should continue to live with their mother, and her partner if, as well as her maintaining contact with him, ….. There is no evidence to suggest that there is any barrier to his removal if he is in fact a member of the family unit" (paragraph 45).

13. Accordingly, this was a well balanced determination.

14. Second, with respect to the age of the children, it is well stated now in the case of **Azimi-Moayed** that, "seven years from age 4 is likely to be more significant to a child than the first seven years of life", because "very young children are focused on their parents rather than their peers and are adaptable". That case also affirmed that, "as the starting point, it is in the best interests of children to be with both their parents".

15. It is these considerations that have effectively informed the judge's decision with respect to the material facts of this case. Those material facts have been elaborately set out by the judge in the body of the determination. It is quite clear that the judge was fully cognisant of them. With respect to the application of Section 117 of the 2014 Act, the case of **Dube** establishes that provided that the "public interest considerations" are in the judge's mind, which they plainly were, it is unnecessary to make a specific reference to the statutory provisions as such.

16. It was plain in this case that the judge was fully aware of the fact that little weight had to be granted to private life rights that had been developed during a time when the status of the Appellants was "precarious" in the UK. All in all, therefore, there is no error of law in the determination.

Notice of Decision

17. There is no material error of law in the judge's decision. The determination shall stand.

18. No anonymity order is made.

Signed Dated

Deputy Upper Tribunal Judge Juss 25th April 2015